

EXHIBIT C

SB 120

Page 1

Date of Hearing: June 26, 2007

ASSEMBLY COMMITTEE ON HEALTH

Mervyn Dymally, Chair

SB 120 (Padilla and Migden) - As Amended: June 19, 2007

SENATE VOTE : 22-17

SUBJECT : Food facilities: nutritional information.

SUMMARY : Requires each food facility that shares the same trade name with at least nine other food facilities in the state, regardless of whether the food facilities are subject to the same ownership or type of ownership, that offers for sale substantially the same menu items, to make nutritional information available to consumers for all standard menu items. Specifically, this bill :

- 1) Requires the following information for each menu item to include, but not be limited to:
 - a) Total number of calories;
 - b) Total number of grams of saturated fat;
 - c) Total number of grams of trans fat;
 - d) Total number of carbohydrates; and,
 - e) Total number of milligrams of sodium.
- 2) Requires each food facility that uses a standard menu to provide the nutritional information next to each item on the menu in a size and typeface similar to other information about each menu item. Requires the bottom of each page of a menu to include, in a clear and conspicuous manner, the following statement: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium."
- 3) Allows a food facility, if the food facility also uses a menu board, to limit the nutritional information listed on the menu board to the total number of calories per item in a size and typeface similar to other information about the item.
- 4) Requires each food facility that uses only a menu board to provide on the menu board the total number of calories per item in a size and typeface similar to other information on the menu board about the item. Requires this type of food facility to, upon request, make the other nutritional

SB 120
Page 2

information available to consumers in writing at the point of sale.

5) Allows menus and menu boards to include a disclaimer that indicates that there may be minimal variations in nutritional content across servings, based on slight variations in overall size and quantities of ingredients, and based on special ordering.

6) Excludes from this bill items that are on the menu for less than six months and to condiments and other items placed on the table or counter for general use without charge.

7) Exempts application of this bill to alcoholic beverages.

Additionally exempts the following facilities from this bill:

- a) Certified farmers' markets;
- b) Commissaries;
- c) Licensed health care facilities;
- d) Mobile support units;
- e) Public and private school cafeterias;
- f) Restricted food service facilities;
- g) Temporary food facilities; and,
- h) Vending machines.

8) States that commencing on July 1, 2009, a food facility that violates this bill is guilty of an infraction, punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) for each violation, which may be assessed by a local enforcement agency. Prohibits making a violation of this bill a misdemeanor.

9) Makes legislative findings and declarations on the importance of nutritional information to allow customers to make informed decisions about their health and diet.

EXISTING LAW :

1) Renames the Department of Health Services as the Department of Health Care Services and transfers certain public health responsibilities, including the regulation of food facilities, to a newly established Department of Public Health (DPH), as of July 1, 2007.

2) Establishes the California Uniform Retail Food Facilities Law,

SB 120
Page 3

and effective July 1, 2007, the California Retail Food Code (Cal Code), to regulate the health and sanitation standards for food facilities by the DPH. States that primary responsibility for enforcement of Cal Code is with the local enforcement agency.

- 3)Indicates that any person who violates the provisions of Cal Code is guilty of misdemeanor. States that each offense is punishable by a fine of not less than \$25 or more than \$ 1,000, or by imprisonment in the county jail for a term not exceeding six months, or by both fine and imprisonment. Allows a local enforcement agency to suspend or revoke a permit of a food facility that violates the Cal Code.
- 4)Defines "food facility" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level. Includes in this definition permanent and nonpermanent food facilities, including but not limited to: a) public and private school cafeterias; b) restricted food service facilities; c) licensed health care facilities; d) commissaries; e) mobile food facilities; f) mobile support units; g) temporary food facilities; h) vending machines; and, i) certified farmers' markets, for purposes of permitting and enforcement.
- 5)Establishes the United States Food and Drug Administration (FDA) to regulate food, cosmetics, medicines, and medicine products; and ensures that such products are labeled appropriately.

FISCAL EFFECT : According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS :

- 1)PURPOSE OF THIS BILL . According to the sponsors of this bill, the American Heart Association, the California Center for Public Health Advocacy (CCPHA), and the American Cancer Society, this bill is an effort to establish standardized nutritional information at the point of sale at large chain restaurants. They state that currently, restaurants are not required to provide consumers with nutritional information at the point of sale. While some restaurants provide nutritional information on websites, and fewer provide nutritional information upon request, half of restaurants provide no

SB 120
Page 4

nutritional information at all. Consumers who want to eat healthier are not being provided with the nutritional information they need to make healthier choices. The current system of voluntary labeling at restaurants is inadequate given the large role that restaurant foods play in the diets of Californians, and at a time when California is experiencing one of the fastest rates of increase in adult obesity, this bill will educate Californian's about the food they are consuming.

2)FEDERAL LABELING REQUIREMENTS . The Nutrition Labeling and Education Act of 1990 (NLEA) became law on November 8, 1990, and requires manufacturers of packaged food to list nutrition information on labels. The NLEA addresses three primary areas: the nutrition label, nutrient content claims, and health claims. The new nutrition labeling regulations require nutrition labels on almost all packaged foods, revise the list of nutrients whose content levels are required to be shown on the nutrition label, adopt a new format for the nutrition label, and provide for more consistent serving sizes across product lines to reflect the amounts people actually eat. The basic nutrition label is to list 14 nutrients. The nutrients and the order in which they must be listed are: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron. Other vitamins and minerals for which Reference Daily Intakes have been established must be declared if a claim is made about them or if they have been added as a nutrient supplement. The NLEA exempts restaurants from the labeling requirements unless restaurants make a nutrient content claim ("low fat" or "high fiber") or health claim ("heart healthy"), then such restaurants must provide nutrition information for any food or meal for which a claim was made.

3)DINING OUT . According to the National Restaurant Association (NRA), total nationwide sales for restaurants in 2007 are estimated at \$537 billion. In California, the 2006 restaurant sales were estimated at \$51.5 billion. NRA also estimates that the average household expenditure for food away from home in 2005 was \$2,634, or \$1,054 per person. In 1998, data from the United States Department of Agriculture (USDA) indicates that the share of food dollars spent away from home is 47%. In 2004, one of the recommendations by the FDA's Obesity Working Group was to encourage restaurants to provide calorie

SB 120
Page 5

and nutrition information. The FDA points out that such information would help consumers make healthier and lower-calorie choices outside the home, where Americans now spend nearly half their total food budget. The USDA also points out that improved diets could prevent a significant proportion of heart disease, stroke, cancer, diabetes, osteoporosis-related hip fractures, and neural tube birth defects in the United States.

4) OTHER STATES . According to the National Conference of State Legislatures, Arizona, Connecticut, Hawaii, Illinois, New Jersey, and New Mexico have pending legislation similar to this bill.

5) OBESITY . According to the federal Health and Human Services Department, 64% of Americans are overweight or obese. Obesity is considered a risk factor for a number of diseases, including diabetes, cardiovascular disease, and cancer. The Centers for Disease Control and Prevention released a study in 2004 that found that poor diet and inactivity were linked to 111,909 deaths in the United States in 2000. Results from the 1999-2002 National Health and Nutrition Examination Survey (NHANES) indicate that 16% of children and adolescents ages six to nine years of age are overweight. This represents a 45% increase from the overweight estimates obtained from NHANES III (1988-94). A national study found that 9.1% of total U.S. medical in 1998 could be attributed to being overweight and/or obese. The dollar figure for this spending may have reached as high as \$78.5 billion (\$92.6 billion in 2002 dollars). Obesity and being overweight are chronic conditions, and result from a variety of factors including behavior, environment, and genetics. The two factors that play the largest roles in obesity are behavior and environment, which are also considered the best areas for prevention and treatment. According to the CCPHA, the numbers of overweight and inactive children have reached an all-time high in California. CCPHA found that statewide, approximately 27% of children are overweight and 40% are unfit.

6) GOVERNOR'S HEALTH CARE REFORM PROPOSAL . The Governor's health care reform proposal calls for reversing obesity trends through innovative and comprehensive strategies. The Governor's proposal includes a sustained media campaign to encourage healthy choices; community-based activities to increase access to healthy food and physical activity in

SB 120
Page 6

stores, schools, and neighborhoods; employee wellness programs; and school-based strategies that engage the broader community in obesity prevention activity.

7)PRIOR LEGISLATION . SB 679 (Ortiz) introduced in 2003 would have required restaurants to make nutritional information immediately available to customers, upon request, in a take-away form, and post a sign stating that the information is available. This bill failed passage in the Assembly Health Committee. SB 1171 (Ortiz) of 2004 was substantially similar to SB 679. SB 1171 was referred to the Senate Committee on Health and Human Services, but was never heard.

8)SUPPORT . Supporters such as the American Diabetes Association, American Heart Association, and the California WIC Association indicate that consumers have the right to know the nutritional content of restaurant meals. They state that this bill will assist Californians in making changes in their diet choices at restaurants, and is an important strategy for reducing obesity and other diseases, and protecting the public's health.

9)OPPOSITION . Opponents such as the California Restaurant Association and the California Grocers Association indicate the following: this bill will not address the obesity issue; most food establishments have existing health options on the menus; nutritional content can vary significantly even for the same dish or food; potential liability for food service establishments because of variations in nutritional information; providing all the nutritional information would be overwhelming and unrealistic; and, the cost of compliance would be significant. McDonald's Hispanic Owner/Operators of California indicates that any information provided on a menu board would be limited in scope and meaningless to most customers because there would be no context to help them understand the numbers in relation to their dietary needs. It also states that McDonald's has been providing nutritional information to customers for over 30 years and it is impractical, difficult, and expensive to modify restaurant menu boards, including space limitations.

10)SUGGESTED AMENDMENTS . On page 4, lines 6-10, this bill requires that a food facility that uses a menu board to provide the total number of calories per item on its menu board, must make available to customers other nutritional

SB 120
Page 7

information upon request. Reference to "other nutritional information" is vague. The author may wish to amend this subsection to specify that the "other nutritional information" that must be made available includes, but is not limited, to the information specified in #1) of the summary of this bill (total number of grams of saturated fat; total number of grams of trans fat; total number of carbohydrates; and, total number of milligrams of sodium).

11)POLICY QUESTION . What constitutes a single violation of this bill?

REGISTERED SUPPORT / OPPOSITION :

Support

American Cancer Society (sponsor)
American Heart Association (co-sponsor)
California Center for Public Health Advocacy (co-sponsor)
California Optometric Association (co-sponsor)
Alameda County Board of Supervisors
American Academy of Pediatrics California District
American Diabetes Association
American Federation of State, County and Municipal Employees, AFL-CIO
Baldwin Park City Council
Berkeley City Council
California Adolescent Nutrition and Fitness Program
California Association of Family Physicians
California Black Health Network, Inc
California Chapter of the American College of Cardiology
California Chiropractic Association
California Medical Association
California Nurses Association
California School Employees Association, AFL-CIO
California State PTA
California WIC Association
Casa de Bonita Residential Care Facility
Congress of California Seniors
Consumer Federation of California
Contra Costa County Board of Supervisors
County of Los Angeles Public Health Department
Diabetes Coalition of California
Gray Panthers California
Health Officers Association of California

SB 120
Page 8

Latino Coalition for a Healthy California
Latino Diabetes Association
Latino Health Access
Los Angeles County Board of Supervisors
Lucille Packard Children's Hospital at Stanford
Marin County Board of Supervisors
Public and Environmental Health Advisory Board
Sierra Cascade Nutrition and Activity Consortium
Stanford University School of Medicine
State Building and Construction Trades Council

Opposition

Baskin-Robbins
California Alliance for Consumer Protection
California Chamber of Commerce
California Grocers Association
California Hispanic Chambers of Commerce
California Independent Grocers Association
California Restaurant Association
California Retailers Association
Darden Restaurants
Golden Gate Restaurant Association
International Franchise Association
McDonald's
McDonald's Hispanic Owner/Operators of California
Several restaurant and franchise owners

Analysis Prepared by : Rosielyn Pulmano / HEALTH / (916)
319-2097